

State of Arizona
Senate
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First Regular Session
2001

CHAPTER 95

SENATE BILL 1089

AN ACT

AMENDING SECTIONS 5-395, 28-673, 28-1303, 28-1321, 28-1381 AND 28-1385,
ARIZONA REVISED STATUTES; RELATING TO ALCOHOL RELATED OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395, Arizona Revised Statutes, is amended to
3 read:

4 5-395. Operating or in actual physical control of a motorized
5 watercraft while intoxicated; violation;
6 classification; definition

7 A. It is unlawful for any person to operate or be in actual physical
8 control of a motorized watercraft that is underway within this state under
9 any of the following circumstances:

10 1. While under the influence of intoxicating liquor, any drug, a vapor
11 releasing substance containing a toxic substance or any combination of
12 liquor, drugs or vapor releasing substances if the person is impaired to the
13 slightest degree.

14 2. If the person has an alcohol concentration of ~~0.10~~ 0.08 or more
15 within two hours of operating or being in actual physical control of the
16 motorized watercraft and the alcohol concentration results from alcohol
17 consumed either before or while operating or being in actual physical control
18 of the motorized watercraft.

19 3. While there is any drug as defined in section 13-3401 or its
20 metabolite in the person's body.

21 4. If the motorized watercraft is a commercial motorized watercraft
22 and the person has an alcohol concentration of 0.04 or more.

23 B. It is not a defense to a charge of a violation of subsection A,
24 paragraph 1 of this section that the person is or has been entitled to use
25 the drug under the laws of this state. A person using a drug prescribed by
26 a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or
27 17 is not guilty of violating subsection A, paragraph 3 of this section.

28 C. The state shall not dismiss a charge of violating this section for
29 either of the following:

30 1. In return for a plea of guilty or no contest to any other offense
31 by the person charged with the violation of this section.

32 2. For the purpose of pursuing any other misdemeanor or a petty
33 offense, including those arising out of the same event or course of conduct,
34 unless there is clearly an insufficient legal or factual basis to pursue the
35 charge of violating this section.

36 D. In any prosecution for a violation of this section the state, for
37 the purpose of classification and sentencing pursuant to section 5-395.01 or
38 5-396, shall allege all prior convictions of violating this section occurring
39 within the past thirty-six months, unless there is clearly an insufficient
40 legal or factual basis to do so.

41 E. In any trial, action or proceeding for a violation of this section
42 or section 5-396 other than a trial, action or proceeding involving operating
43 or being in actual physical control of a commercial motorized watercraft, the
44 defendant's alcohol concentration within two hours of the time of operating
45 or being in actual physical control as shown by analysis of the defendant's

1 blood, breath or other bodily substance gives rise to the following
2 presumptions:

3 1. If there was at that time 0.05 or less alcohol concentration in the
4 defendant's blood, breath or other bodily substance, it may be presumed that
5 the defendant was not under the influence of intoxicating liquor.

6 2. If there was at that time in excess of 0.05 but less than ~~0.10~~ 0.08
7 alcohol concentration in the defendant's blood, breath or other bodily
8 substance, such fact shall not give rise to any presumption that the
9 defendant was or was not under the influence of intoxicating liquor, but such
10 fact may be considered with other competent evidence in determining the guilt
11 or innocence of the defendant.

12 3. If there was at that time ~~0.10~~ 0.08 or more alcohol concentration
13 in the defendant's blood, breath or other bodily substance, it may be
14 presumed that the defendant was under the influence of intoxicating
15 liquor.

16 Paragraph 1, 2 or 3 of this subsection shall not be construed as limiting the
17 introduction of any other competent evidence bearing on the question of
18 whether or not the defendant was under the influence of intoxicating liquor.

19 F. If a blood test is administered, only a physician, a registered
20 nurse or another qualified person may withdraw blood for the purpose of
21 determining the alcohol concentration or drug content. The qualifications
22 of the individual withdrawing the blood and the method used to withdraw the
23 blood are not foundational prerequisites for the admissibility of any blood
24 alcohol content determination made pursuant to this subsection.

25 G. If a law enforcement officer administers a duplicate breath test
26 and the person tested is given a reasonable opportunity to arrange for an
27 additional test pursuant to subsection H of this section, a sample of the
28 person's breath does not have to be collected or preserved.

29 H. The person tested shall be given a reasonable opportunity to
30 arrange for any physician, registered nurse or other qualified person of his
31 THE TESTED PERSON'S own choosing to administer a test or tests in addition
32 to any administered at the direction of a law enforcement officer. The
33 failure or inability to obtain an additional test by a person does not
34 preclude the admission of evidence relating to the test or tests taken at the
35 direction of a law enforcement officer.

36 I. If a person under arrest refuses to submit to a test or tests under
37 section 5-395.03, whether or not a sample was collected pursuant to
38 subsection J of this section or a search warrant, evidence of refusal is
39 admissible in any civil or criminal action or other proceeding. The issue
40 of refusal shall be an issue of fact to be determined by the trier of fact
41 in all cases.

42 J. Notwithstanding any other law, if a law enforcement officer has
43 probable cause to believe that a person has violated this section and a
44 sample of blood, urine or any other bodily substance is taken from that
45 person for any reason a portion of that sample sufficient for analysis shall

1 be provided to a law enforcement officer if requested for law enforcement
2 purposes. A person who fails to comply with this subsection is guilty of a
3 class 1 misdemeanor.

4 K. A person who collects blood, urine or any other bodily substance
5 under this section or any hospital, laboratory or clinic employing or
6 utilizing the services of the person does not incur any civil liability as
7 a result of this activity if requested by a law enforcement officer to
8 collect blood, urine or any other bodily substances unless the person, while
9 performing the activity, acts with gross negligence.

10 L. A statement by the defendant that he THE DEFENDANT was operating
11 a motorized watercraft that was underway and that was involved in an accident
12 resulting in injury to or death of any person is admissible in any criminal
13 proceeding without further proof of corpus delicti if it is otherwise
14 admissible.

15 M. At the arraignment, the court shall inform the defendant that he
16 THE DEFENDANT may request a trial by jury and that the request, if made,
17 shall be granted.

18 N. In this section, "alcohol concentration" means grams of alcohol per
19 one hundred milliliters of blood or grams of alcohol per two hundred ten
20 liters of breath.

21 Sec. 2. Section 28-673, Arizona Revised Statutes, is amended to read:

22 28-673. Traffic accidents; implied consent; tests

23 A. A person who operates a motor vehicle within this state gives
24 consent to a test or tests of the person's blood, breath, urine or other
25 bodily substance for the purposes of determining alcohol concentration or
26 drug content if the person is involved in a traffic accident resulting in
27 death or serious physical injury as defined in section 13-105 and a law
28 enforcement officer has probable cause to believe that the person caused the
29 accident or the person is issued a citation for a violation of any provision
30 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4
31 of this title.

32 B. The test or tests chosen by the law enforcement agency shall be
33 administered at the direction of a law enforcement officer who has reasonable
34 grounds to believe that the person was involved in a traffic accident
35 resulting in death or serious physical injury as defined in section 13-105
36 and who has probable cause to believe that the person caused the accident or
37 the person was issued a citation for a violation of any provision of this
38 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this
39 title.

40 C. After a determination is made that a person was involved in a
41 traffic accident resulting in death or serious physical injury as defined in
42 section 13-105 and the officer has probable cause to believe that the person
43 caused the accident or the person was issued a citation for a violation of
44 any provision of this article, article 2, 3 or 5 through 15 of this chapter
45 or chapter 4 of this title, the person may be requested to submit to and

1 successfully complete any test or tests prescribed by subsection A of this
2 section, and if the person refuses, the person shall be informed that the
3 person's license or permit to drive will be suspended or denied for twelve
4 months, or for two years for a second or subsequent refusal in a period of
5 sixty months, unless the person expressly agrees to submit to and
6 successfully completes the test or tests. A failure to expressly agree to
7 the test or successfully complete the test is deemed a refusal. The person
8 shall also be informed that if the test results show a blood or breath
9 alcohol concentration of ~~0.10~~ 0.08 or more, or if the results show a blood
10 or breath alcohol concentration of 0.04 or more and the person was driving
11 or in actual physical control of a commercial motor vehicle, the person's
12 license or permit to drive will be suspended or denied for not less than
13 ninety consecutive days.

14 D. If a person refuses to submit to the test designated by the law
15 enforcement agency as provided in subsection B of this section:

16 1. The test shall not be given, except as provided in section 28-1388,
17 subsection E or pursuant to a search warrant.

18 2. The law enforcement officer directing the administration of the
19 test shall:

20 (a) File a certified report of the refusal with the department.

21 (b) On behalf of the department, serve an order of suspension on the
22 person that is effective fifteen days after the date the order is served.

23 (c) Require the immediate surrender of any license or permit to drive
24 that is issued by this state and that is in the possession or control of the
25 person.

26 (d) If the license or permit is not surrendered, state the reason why
27 it is not surrendered.

28 (e) If a valid license or permit is surrendered, issue a temporary
29 driving permit that is valid for fifteen days.

30 (f) Forward the certified report of refusal, a copy of the completed
31 notice of suspension, a copy of any completed temporary permit and any driver
32 license or permit taken into possession under this section to the department
33 within five days after the issuance of the notice of suspension.

34 E. Section 28-1321, subsections E through O apply to any test
35 prescribed by this section and to any person who refuses to submit to a test
36 prescribed by this section, except that:

37 1. The certified report shall state the law enforcement officer's
38 reasonable grounds to believe that the person was involved in a traffic
39 accident resulting in death or serious physical injury as defined in section
40 13-105 and the law enforcement officer's probable cause to believe that the
41 person caused the accident or the person was issued a citation for a
42 violation of any provision of this article, article 2, 3 or 5 through 15 of
43 this chapter or chapter 4 of this title.

44 2. The certified report shall be filed pursuant to subsection D of
45 this section.

1 3. The scope of the hearing shall include the law enforcement
2 officer's probable cause to believe that the person was involved in a traffic
3 accident resulting in death or serious physical injury as defined in section
4 13-105 and the law enforcement officer's probable cause to believe that the
5 person caused the accident or the person was issued a citation for a
6 violation of any provision of this article, article 2, 3 or 5 through 15 of
7 this chapter or chapter 4 of this title.

8 F. A person who is dead, unconscious or otherwise in a condition
9 rendering the person incapable of refusal is deemed not to have withdrawn the
10 consent provided by subsection A of this section and the test or tests shall
11 be administered.

12 Sec. 3. Section 28-1303, Arizona Revised Statutes, is amended to read:

13 28-1303. Driving under the influence abatement council

14 A. The driving under the influence abatement council is established
15 consisting of the following seven members:

16 1. The director of the department of public safety or the director's
17 designee.

18 2. The assistant director for the motor vehicle division of the
19 department of transportation or the assistant director's designee.

20 3. One member who represents the governor's office of ~~community and~~
21 highway safety and who is appointed by the governor.

22 4. Two members of the public who are appointed by the governor.

23 5. One member of the public who is appointed by the speaker of the
24 house of representatives.

25 6. One member of the public who is appointed by the president of the
26 senate.

27 B. Members appointed pursuant to subsection A, paragraphs 4, 5 and 6
28 of this section serve three year staggered terms.

29 C. The members of the council shall annually elect a chairperson from
30 among its members. A member shall not serve consecutive terms as
31 chairperson.

32 D. Members of the council are not eligible to receive compensation,
33 but members who are appointed pursuant to subsection A, paragraphs 4, 5 and
34 6 of this section are eligible for reimbursement of expenses pursuant to
35 title 38, chapter 4, article 2.

36 E. The council may use the staff of the department of public safety
37 and the motor vehicle division of the department of transportation.

38 F. The council shall:

39 1. Evaluate proposed pilot programs that use emerging technologies to
40 educate, prevent or deter occurrences of driving under the influence.

41 2. Make grants from the driving under the influence abatement fund
42 established by section 28-1304 to pilot programs that are described in
43 paragraph 1 of this subsection and that the council deems suitable and
44 oversee the progress of those programs.

1 3. Receive reports as prescribed by the council from pilot programs
2 that receive monies pursuant to paragraph 2 of this subsection.

3 4. Based on the reports presented pursuant to paragraph 3 of this
4 subsection, either:

5 (a) Make an additional grant and require additional progress reports.

6 (b) Refuse to make any additional grants.

7 (c) Make a recommendation to the legislature that a program be
8 continued indefinitely and that participation in the program be made a
9 condition of sentencing pursuant to sections 28-1382 and 28-1383.

10 5. Make grants from the driving under the influence abatement fund
11 established by section 28-1304 to political subdivisions AND TRIBAL
12 GOVERNMENTS that apply for monies for ALCOHOL ABUSE TREATMENT SERVICES,
13 enforcement purposes and prosecutorial activities related to preventing
14 driving under the influence occurrences.

15 6. ON OR BEFORE DECEMBER 1 OF EACH YEAR, SUBMIT TO THE GOVERNOR'S
16 OFFICE OF HIGHWAY SAFETY A WRITTEN REPORT ON THE EFFECTS OF REDUCING THE
17 PRESCRIBED ALCOHOL CONCENTRATION LEVEL TO 0.08 AND SHALL PROVIDE A COPY OF
18 THE REPORT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF
19 THE SENATE, THE SECRETARY OF STATE AND THE DIRECTOR OF THE ARIZONA STATE
20 LIBRARY, ARCHIVES AND PUBLIC RECORDS.

21 Sec. 4. Section 28-1321, Arizona Revised Statutes, is amended to read:

22 28-1321. Implied consent; tests; refusal to submit to test;
23 order of suspension; hearing; review; temporary
24 permit; notification of suspension

25 A. A person who operates a motor vehicle in this state gives consent,
26 subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or
27 28-1383, to a test or tests of the person's blood, breath, urine or other
28 bodily substance for the purpose of determining alcohol concentration or drug
29 content if the person is arrested for any offense arising out of acts alleged
30 to have been committed in violation of this chapter or section 4-244,
31 paragraph 33 while the person was driving or in actual physical control of
32 a motor vehicle while under the influence of intoxicating liquor or drugs.
33 The test or tests chosen by the law enforcement agency shall be administered
34 at the direction of a law enforcement officer having reasonable grounds to
35 believe that the person was driving or in actual physical control of a motor
36 vehicle in this state either:

37 1. While under the influence of intoxicating liquor or drugs.

38 2. If the person is under twenty-one years of age, with spirituous
39 liquor in the person's body.

40 B. After an arrest a violator shall be requested to submit to and
41 successfully complete any test or tests prescribed by subsection A of this
42 section, and if the violator refuses the violator shall be informed that the
43 violator's license or permit to drive will be suspended or denied for twelve
44 months, or for two years for a second or subsequent refusal within a period
45 of sixty months, unless the violator expressly agrees to submit to and

1 successfully completes the test or tests. A failure to expressly agree to
2 the test or successfully complete the test is deemed a refusal. The violator
3 shall also be informed that if the test results show a blood or breath
4 alcohol concentration of ~~0.10~~ 0.08 or more, or if the results show a blood
5 or breath alcohol concentration of 0.04 or more and the violator was driving
6 or in actual physical control of a commercial motor vehicle, the violator's
7 license or permit to drive will be suspended or denied for not less than
8 ninety consecutive days.

9 C. A person who is dead, unconscious or otherwise in a condition
10 rendering the person incapable of refusal is deemed not to have withdrawn the
11 consent provided by subsection A of this section and the test or tests may
12 be administered, subject to section 4-244, paragraph 33 or section 28-1381,
13 28-1382 or 28-1383.

14 D. If a person under arrest refuses to submit to the test designated
15 by the law enforcement agency as provided in subsection A of this section:

16 1. The test shall not be given, except as provided in section 28-1388,
17 subsection E or pursuant to a search warrant.

18 2. The law enforcement officer directing the administration of the
19 test shall:

20 (a) File a certified report of the refusal with the department.

21 (b) On behalf of the department, serve an order of suspension on the
22 person that is effective fifteen days after the date the order is served.

23 (c) Require the immediate surrender of any license or permit to drive
24 that is issued by this state and that is in the possession or control of the
25 person.

26 (d) If the license or permit is not surrendered, state the reason why
27 it is not surrendered.

28 (e) If a valid license or permit is surrendered, issue a temporary
29 driving permit that is valid for fifteen days.

30 (f) Forward the certified report of refusal, a copy of the completed
31 notice of suspension, a copy of any completed temporary permit and any driver
32 license or permit taken into possession under this section to the department
33 within five days after the issuance of the notice of suspension.

34 E. The certified report is subject to the penalty for perjury as
35 prescribed by section 28-1561 and shall state all of the following:

36 1. The officer's reasonable grounds to believe that the arrested
37 person was driving or in actual physical control of a motor vehicle in this
38 state either:

39 (a) While under the influence of intoxicating liquor or drugs.

40 (b) If the person is under twenty-one years of age, with spirituous
41 liquor in the person's body.

42 2. The manner in which the person refused to submit to the test or
43 tests.

44 3. That the person was advised of the consequences of refusal.

1 F. On receipt of the certified report of refusal and a copy of the
2 order of suspension and on the effective date stated on the order, the
3 department shall enter the order of suspension on its records unless a
4 written request for a hearing as provided in this section has been filed by
5 the accused person. If the department receives only the certified report of
6 refusal, the department shall notify the person named in the report in
7 writing sent by mail that:

8 1. Fifteen days after the date of issuance of the notice the
9 department will suspend the person's license or permit, driving privilege or
10 nonresident driving privilege.

11 2. The department will provide an opportunity for a hearing if the
12 person requests a hearing in writing and the request is received by the
13 department within fifteen days after the notice is sent.

14 G. The order of suspension issued by a law enforcement officer or the
15 department under this section shall notify the person that:

16 1. The person may submit a written request for a hearing.

17 2. The request for a hearing must be received by the department within
18 fifteen days after the date of the notice or the order of suspension will
19 become final.

20 3. The affected person's license or permit to drive or right to apply
21 for a license or permit or any nonresident operating privilege will be
22 suspended for twelve months from that date or for two years from that date
23 for a second or subsequent refusal within a period of sixty months.

24 H. The order for suspension shall:

25 1. Be accompanied by printed forms that are ready to mail to the
26 department and that may be filled out and signed by the person to indicate
27 the person's desire for a hearing.

28 2. Advise the person that unless the person has surrendered any driver
29 license or permit issued by this state the person's hearing request will not
30 be accepted, except that the person may certify pursuant to section 28-3170
31 that the license or permit is lost or destroyed.

32 I. On the receipt of a request for a hearing, the department shall set
33 the hearing within thirty days in the county in which the person named in the
34 report resides unless the law enforcement agency filing the certified report
35 of refusal pursuant to subsection D of this section requests at the time of
36 its filing that the hearing be held in the county where the refusal occurred.

37 J. A timely request for a hearing stays the suspension until a hearing
38 is held, except that the department shall not return any surrendered license
39 or permit to the person but may issue temporary permits to drive that expire
40 no later than when the department has made its final decision. If the person
41 is a resident without a license or permit or has an expired license or
42 permit, the department may allow the person to apply for a license or permit.
43 If the department determines the person is otherwise entitled to the license
44 or permit, the department shall issue and retain a license or permit subject
45 to this section.

1 K. Hearings requested under this section shall be conducted in the
2 same manner and under the same conditions as provided in section
3 28-3306. For the purposes of this section, the scope of the hearing shall
4 include only the issues of whether:

5 1. A law enforcement officer had reasonable grounds to believe that
6 the person was driving or was in actual physical control of a motor vehicle
7 in this state either:

8 (a) While under the influence of intoxicating liquor or drugs.

9 (b) If the person is under twenty-one years of age, with spirituous
10 liquor in the person's body.

11 2. The person was placed under arrest.

12 3. The person refused to submit to the test.

13 4. The person was informed of the consequences of refusal.

14 L. If the department determines at the hearing to suspend the affected
15 person's privilege to operate a motor vehicle, the suspension provided in
16 this section is effective fifteen days after giving written notice of the
17 suspension, except that the department may issue or extend a temporary
18 license that expires on the effective date of the suspension. If the person
19 is a resident without a license or permit or has an expired license or permit
20 to operate a motor vehicle in this state, the department shall deny to the
21 person the issuance of a license or permit for a period of twelve months
22 after the order of suspension becomes effective or for a period of two years
23 after the order of suspension becomes effective for a second or subsequent
24 refusal within a period of sixty months.

25 M. If the suspension order is sustained after the hearing, a motion
26 for rehearing is not required. Within thirty days after a suspension order
27 is sustained, the affected person may file a petition in the superior court
28 to review the final order of suspension or denial by the department in the
29 same manner provided in section 28-3317. The court shall hear the review of
30 the final order of suspension or denial on an expedited basis.

31 N. If the suspension or determination that there should be a denial
32 of issuance is not sustained, the ruling is not admissible in and has no
33 effect on any administrative, civil or criminal court proceeding.

34 O. If it has been determined under the procedures of this section that
35 a nonresident's privilege to operate a motor vehicle in this state has been
36 suspended, the department shall give information in writing of the action
37 taken to the motor vehicle administrator of the state of the person's
38 residence and of any state in which the person has a license.

39 Sec. 5. Section 28-1381, Arizona Revised Statutes, is amended to read:

40 28-1381. Driving or actual physical control while under the
41 influence; trial by jury; presumptions; admissible
42 evidence; sentencing; classification

43 A. It is unlawful for a person to drive or be in actual physical
44 control of a vehicle in this state under any of the following circumstances:

1 1. While under the influence of intoxicating liquor, any drug, a vapor
2 releasing substance containing a toxic substance or any combination of
3 liquor, drugs or vapor releasing substances if the person is impaired to the
4 slightest degree.

5 2. If the person has an alcohol concentration of ~~0.10~~ 0.08 or more
6 within two hours of driving or being in actual physical control of the
7 vehicle and the alcohol concentration results from alcohol consumed either
8 before or while driving or being in actual physical control of the vehicle.

9 3. While there is any drug defined in section 13-3401 or its
10 metabolite in the person's body.

11 4. If the vehicle is a commercial motor vehicle that requires a person
12 to obtain a commercial driver license as defined in section 28-3001 and the
13 person has an alcohol concentration of 0.04 or more.

14 B. It is not a defense to a charge of a violation of subsection A,
15 paragraph 1 of this section that the person is or has been entitled to use
16 the drug under the laws of this state.

17 C. A person who is convicted of a violation of this section is guilty
18 of a class 1 misdemeanor.

19 D. A person using a drug prescribed by a medical practitioner licensed
20 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
21 subsection A, paragraph 3 of this section.

22 E. In any prosecution for a violation of this section, the state shall
23 allege, for the purpose of classification and sentencing pursuant to this
24 section, all prior convictions of violating this section, section 28-1382 or
25 section 28-1383 occurring within the past thirty-six months, unless there is
26 an insufficient legal or factual basis to do so.

27 F. At the arraignment, the court shall inform the defendant that the
28 defendant may request a trial by jury and that the request, if made, shall
29 be granted.

30 G. In a trial, action or proceeding for a violation of this section
31 or section 28-1383 other than a trial, action or proceeding involving driving
32 or being in actual physical control of a commercial vehicle, the defendant's
33 alcohol concentration within two hours of the time of driving or being in
34 actual physical control as shown by analysis of the defendant's blood, breath
35 or other bodily substance gives rise to the following presumptions:

36 1. If there was at that time 0.05 or less alcohol concentration in the
37 defendant's blood, breath or other bodily substance, it may be presumed that
38 the defendant was not under the influence of intoxicating liquor.

39 2. If there was at that time in excess of 0.05 but less than ~~0.10~~ 0.08
40 alcohol concentration in the defendant's blood, breath or other bodily
41 substance, that fact shall not give rise to a presumption that the defendant
42 was or was not under the influence of intoxicating liquor, but that fact may
43 be considered with other competent evidence in determining the guilt or
44 innocence of the defendant.

1 3. If there was at that time ~~0.10~~ 0.08 or more alcohol concentration
2 in the defendant's blood, breath or other bodily substance, it may be
3 presumed that the defendant was under the influence of intoxicating liquor.

4 H. Subsection G of this section does not limit the introduction of any
5 other competent evidence bearing on the question of whether or not the
6 defendant was under the influence of intoxicating liquor.

7 I. A person who is convicted of a violation of this section:

8 1. Shall be sentenced to serve not less than ten consecutive days in
9 jail and is not eligible for probation or suspension of execution of sentence
10 unless the entire sentence is served.

11 2. Shall pay a fine of not less than two hundred fifty dollars.

12 3. May be ordered by a court to perform community service.

13 J. Notwithstanding subsection I, paragraph 1 of this section, at the
14 time of sentencing the judge may suspend all but twenty-four consecutive
15 hours of the sentence if the person completes a court ordered alcohol or
16 other drug screening, education or treatment program. If the person fails
17 to complete the court ordered alcohol or other drug screening, education or
18 treatment program and has not been placed on probation, the court shall issue
19 an order to show cause to the defendant as to why the remaining jail sentence
20 should not be served.

21 K. If within a period of sixty months a person is convicted of a
22 second violation of this section or is convicted of a violation of this
23 section and has previously been convicted of a violation of section 28-1382
24 or 28-1383 or an act in another jurisdiction that if committed in this state
25 would be a violation of this section or section 28-1382 or 28-1383, the
26 person:

27 1. Shall be sentenced to serve not less than ninety days in jail,
28 thirty days of which shall be served consecutively, and is not eligible for
29 probation or suspension of execution of sentence unless the entire sentence
30 has been served.

31 2. Shall pay a fine of not less than five hundred dollars.

32 3. May be ordered by a court to perform community service.

33 4. Shall have the person's driving privilege revoked for one
34 year. The court shall report the conviction to the department. On receipt
35 of the report, the department shall revoke the person's driving privilege and
36 shall require the person to equip any motor vehicle the person operates with
37 a certified ignition interlock device for one year on the conclusion of the
38 license suspension or revocation. In addition, the court may order the
39 person to equip any motor vehicle the person operates with a certified
40 ignition interlock device for more than one year on the conclusion of the
41 license suspension or revocation. The person who operates a motor vehicle
42 with a certified ignition interlock device under this paragraph shall comply
43 with article 5 of this chapter.

44 L. Notwithstanding subsection K, paragraph 1 of this section, at the
45 time of sentencing, the judge may suspend all but thirty days of the sentence

1 if the person completes a court ordered alcohol or other drug screening,
2 education or treatment program. If the person fails to complete the court
3 ordered alcohol or other drug screening, education or treatment program and
4 has not been placed on probation, the court shall issue an order to show
5 cause as to why the remaining jail sentence should not be served.

6 M. In applying the sixty month provision of subsection K of this
7 section, the dates of the commission of the offense shall be the determining
8 factor, irrespective of the sequence in which the offenses were committed.

9 N. A second violation for which a conviction occurs as provided in
10 this section shall not include a conviction for an offense arising out of the
11 same series of acts.

12 Sec. 6. Section 28-1385, Arizona Revised Statutes, is amended to read:

13 28-1385. Administrative license suspension for driving under
14 the influence; report; hearing; summary review

15 A. A law enforcement officer shall forward to the department a
16 certified report as prescribed in subsection B of this section, subject to
17 the penalty for perjury prescribed by section 28-1561, if both of the
18 following occur:

19 1. The officer arrests a person for a violation of section 4-244,
20 paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

21 2. The person submits to a blood or breath alcohol test permitted by
22 section 28-1321, the results of which indicate either:

23 (a) ~~0.10~~ 0.08 or more alcohol concentration in the person's blood or
24 breath.

25 (b) 0.04 or more alcohol concentration in the person's blood or breath
26 if the person was driving or in actual physical control of a commercial motor
27 vehicle.

28 B. The officer shall make the certified report required by subsection
29 A of this section on forms supplied or approved by the department. The
30 report shall state information that is relevant to the enforcement action,
31 including:

32 1. Information that adequately identifies the arrested person.

33 2. A statement of the officer's grounds for belief that the person was
34 driving or in actual physical control of a motor vehicle in violation of
35 section 4-244, paragraph 33, section 28-1381 or section 28-1382.

36 3. A statement that the person was arrested for a violation of section
37 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

38 4. A report of the results of the chemical test that was administered.

39 C. The officer shall also serve an order of suspension on the person
40 on behalf of the department. The order of suspension:

41 1. Is effective fifteen days after the date it is served.

42 2. Shall require the immediate surrender of any license or permit to
43 drive that is issued by this state and that is in the possession or control
44 of the person.

1 3. Shall contain information concerning the right to a summary review
2 and hearing, including information concerning the hearing as required by
3 section 28-1321, subsections G and H.

4 4. Shall be accompanied by printed forms ready to mail to the
5 department that the person may fill out and sign to indicate the person's
6 desire for a hearing.

7 5. Shall be entered on the department's records on receipt of the
8 report by the officer and a copy of the order of suspension.

9 D. If the license or permit is not surrendered pursuant to subsection
10 C of this section, the officer shall state the reason for the nonsurrender.
11 If a valid license or permit is surrendered, the officer shall issue a
12 temporary driving permit that is valid for fifteen days. The officer shall
13 forward a copy of the completed order of suspension, a copy of any completed
14 temporary permit and any driver license or permit taken into possession under
15 this section to the department within five days after the issuance of the
16 order of suspension along with the report.

17 E. The department shall suspend the affected person's license or
18 permit to drive or right to apply for a license or permit or any nonresident
19 operating privilege for not less than ninety consecutive days from that date.

20 F. Notwithstanding subsections A through E of this section, the
21 department shall suspend the driving privileges of the person described in
22 subsection A of this section for not less than thirty consecutive days and
23 shall restrict the driving privileges of the person for not less than sixty
24 consecutive additional days to travel between the person's place of
25 employment and residence and during specified periods of time while at
26 employment, to travel between the person's place of residence and the
27 person's secondary or postsecondary school, according to the person's
28 employment or educational schedule, to travel between the person's place of
29 residence and the office of the person's probation officer for scheduled
30 appointments or to travel between the person's place of residence and a
31 treatment facility for scheduled appointments if the person:

32 1. Did not cause serious physical injury as defined in section 13-105
33 to another person during the course of conduct out of which the current
34 action arose.

35 2. Has not been convicted of a violation of section 28-1381, 28-1382
36 or 28-1383 within sixty months of the date of commission of the acts out of
37 which the current action arose. The dates of commission of the acts are the
38 determining factor in applying the sixty month provision.

39 3. Has not had the person's privilege to drive suspended pursuant to
40 this section or section 28-1321 within sixty months of the date of commission
41 of the acts out of which the current action arose.

42 G. If the department receives only the report of the results of the
43 blood or breath alcohol test and the results indicate ~~0.10~~ 0.08 or more
44 alcohol concentration in the person's blood or breath, or show a blood or
45 breath alcohol concentration of 0.04 or more and the person was driving or

1 in actual physical control of a commercial motor vehicle, the department
2 shall notify the person named in the report in writing sent by mail that
3 fifteen days after the date of issuance of the notice the department will
4 suspend the person's license or permit, driving privilege or nonresident
5 driving privilege. The notice shall also state that the department will
6 provide an opportunity for a hearing and administrative review if the person
7 requests a hearing or review in writing and the request is received by the
8 department within fifteen days after the notice is sent.

9 H. A timely request for a hearing stays the suspension until a hearing
10 is held, except that the department shall not return any surrendered license
11 or permit to the person but may issue temporary permits to drive that expire
12 no later than when the department has made its final decision. If the person
13 is a resident without a license or permit or has an expired license or
14 permit, the department may allow the person to apply for a license or permit.
15 If the department determines the person is otherwise entitled to the license
16 or permit, the department shall issue, but retain, the license or permit,
17 subject to this section. All hearings requested under this section shall be
18 conducted in the same manner and under the same conditions as provided in
19 section 28-3306.

20 I. For the purposes of this section, the scope of the hearing shall
21 include only the following issues:

22 1. Whether the officer had reasonable grounds to believe the person
23 was driving or was in actual physical control of a motor vehicle while under
24 the influence of intoxicating liquor.

25 2. Whether the person was placed under arrest for a violation of
26 section 4-244, paragraph 33, section 28-1381, section 28-1382 or section
27 28-1383.

28 3. Whether a test was taken, the results of which indicated the
29 alcohol concentration in the person's blood or breath at the time the test
30 was administered of either:

31 (a) ~~0.10~~ 0.08 or more.

32 (b) 0.04 or more if the person was driving or in actual physical
33 control of a commercial motor vehicle.

34 4. Whether the testing method used was valid and reliable.

35 5. Whether the test results were accurately evaluated.

36 J. The results of the blood or breath alcohol test shall be admitted
37 on establishing the requirements in section 28-1323 or 28-1326.

38 K. If the department determines at the hearing to suspend the affected
39 person's privilege to operate a motor vehicle, the suspension provided in
40 this section is effective fifteen days after giving written notice of the
41 suspension, except that the department may issue or extend a temporary
42 license that expires on the effective date of the suspension. If the person
43 is a resident without a license or permit or has an expired license or permit
44 to operate a motor vehicle in this state, the department shall deny the

1 issuance of a license or permit to the person for not less than ninety
2 consecutive days.

3 L. A person may apply for a summary review of an order issued pursuant
4 to this section instead of a hearing at any time before the effective date
5 of the order. The person shall submit the application in writing to any
6 department driver license examining office together with any written
7 explanation as to why the department should not suspend the driving
8 privilege. The agent of the department receiving the notice shall issue to
9 the person an additional driving permit that expires twenty days from the
10 date the request is received. The department shall review all reports
11 submitted by the officer and any written explanation submitted by the person
12 and shall determine if the order of suspension should be sustained or
13 cancelled. The department shall not hold a hearing, and the review is not
14 subject to title 41, chapter 6. The department shall notify the person of
15 its decision before the temporary driving permit expires.

16 M. If the suspension or determination that there should be a denial
17 of issuance is not sustained after a hearing or review, the ruling is not
18 admissible in and does not have any effect on any civil or criminal court
19 proceeding.

20 N. If it has been determined under the procedures of this section that
21 a nonresident's privilege to operate a motor vehicle in this state has been
22 suspended, the department shall give information in writing of the action
23 taken to the motor vehicle administrator of the state of the person's
24 residence and of any state in which the person has a license.

25 Sec. 7. Effective date

26 This act is effective from and after August 31, 2001.

APPROVED BY THE GOVERNOR APRIL 11, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2001.

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 5, 2001

by the following vote: 24 Ayes,

5 Nays, 1 Not Voting

Randall Strout
President of the Senate
Norma Lowe
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2001,

at 1:07 o'clock 7 M.

Sandra Gammon
Secretary to the Governor

APPROVED THIS 11 day of

April, 2001.

at 11:10 o'clock 11 M.

Jon Kyl
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of April, 2001.

at 3:36 o'clock P M.

Britney Bayless
Secretary of State

S.B. 1089